



Petition Number: 1606-VS-10

Subject Site Address: 4535 E. 169th Street

Petitioner: Omar Usmani

Request: Variances of Standard to modify the landscaping requirements (Article 6.8) for an institutional use in the SF3: Single-Family Medium Density District.

Current Zoning: SF3: Single-Family Medium Density District

Current Land Use: Residential/In-Home Daycare

Approximate Acreage: 2.17 acres+/-

Exhibits:

1. Staff Report
2. Location Map
3. Landscaping Plan
4. Existing Conditions
5. Petitioner's Application

Staff Reviewer: Kevin M. Todd, AICP

OVERVIEW

Location: The subject property is approximately 2.17 acres +/- in size and located at 4535 East 169th Street (the "Property") (see **Exhibit 2**). The Property is zoned SF3: Single-Family Medium Density District. Adjacent property to the west, north, and east is part of the Summit Lakes Subdivision and is also zoned SF3: Single-Family Medium Density District. Property across 169th Street to the south is part of the Brookside Subdivision and is zoned SF2: Single-Family Low Density District.

Property History: The Children's Montessori House¹ started operating on the Property in 2013. The Children's Montessori House offers educational services for Kindergarten and younger. Prior to 2013, the Property was used residentially. Growth of the Children's Montessori House business has caused the need for additional parking facilities on-site.

Additional Site Improvements: In addition to adding a new parking lot and installing landscaping, the petitioner will also be dedicating right-of-way along 169th Street and installing

¹ The Children's Montessori House is classified as an "Educational Institution", per the UDO. Chapter 12 of the UDO defines "Educational Institution" as "[a] public or parochial pre-primary, primary, grade, junior high, high, preparatory school or academy; junior college, college or university, if public or founded or conducted by or under the sponsorship of a religious or charitable organization." The use is permitted in the SF3: Single-Family Medium Density District (per Chapter 13.3, Use Table).

an eight-foot pathway along 169th Street. Adding this segment will complete the pathway along the north side of 169th Street, between Gray Road and Crest Point Drive.

Variance Request: The new parking lot has triggered the Development Plan Review process², which requires the Property's landscaping to be brought into compliance with the landscaping standards for an institutional use, per the UDO. The petitioner has submitted a landscaping plan (see **Exhibit 3**) and is requesting to reduce certain perimeter landscaping requirements in accordance with that plan. The "Summary of Variances" section below will outline the specific landscaping standards that are being requested for relief.

SUMMARY OF VARIANCES

The landscaping standards of the UDO require External Street Frontage landscaping along 169th Street and buffer requirements along the west, north, and east property lines. The petitioner is requesting a reduction in these perimeter landscaping requirements, as further identified below:

External Street Frontage Landscaping Requirements:

Requirement: *Article 6.8 (M)(2)* of the UDO requires a minimum of three (3) shade or evergreen trees; two (2) ornamental trees; and twenty-five (25) shrubs per one hundred (100) lineal feet along an External Street³.

Request: Per the petitioner's submitted landscaping plan, the plant quantities identified in the table below would be installed (including any identified existing plants) if this variance request is approved as proposed:

<u>169th Street (290')</u>	<u>Required</u>	<u>Proposed</u>
Shade/Evergreen Trees	9	5
Ornamental Trees	6	0
Shrubs	73	6

² Chapter 10.7 (C) of the UDO states that "the Development Plan review process shall be necessary prior to any... new or expanded surface Parking Areas...".

³ 169th Street is classified as an External Street.

Buffer Yard Requirements:

Requirement: *Article 6.8 (N)* of the UDO requires Buffer Yard Type B for the east, north, and west buffer yards⁴. Buffer Yard Type B requires a minimum buffer width of forty (40) feet and a 4' tall undulating mound for at least 60% of the length of the shared Lot Line(s). In addition, a minimum of four (4) shade trees; four (4) evergreen trees; and ten (10) shrubs per one hundred (100) lineal feet are required.

Request: Per the petitioner's submitted landscaping plan, the plant quantities identified in the tables below would be installed (including any identified existing plants) if this variance request is approved as proposed:

<u>West Buffer (305')</u>	<u>Required</u>	<u>Proposed</u>
Yard Width	40'	40'
Mound	4' undulating	None
Shade Trees	13	9
Evergreen Trees	13	9
Shrubs	31	31

<u>North Buffer (290')</u>	<u>Required</u>	<u>Proposed</u>
Yard Width	40'	30'
Mound	4' undulating	None
Shade Trees	12	8
Evergreen Trees	12	9
Shrubs	29	24

⁴ The Children's Montessori House is classified as an "Institutional" use for the purposes of determining buffer yard requirements. Institutional uses against SF3 uses/zoning requires Buffer Yard Type B.

<u>East Buffer (305')</u>	<u>Required</u>	<u>Proposed</u>
Yard Width	40'	40' +
Mound	4' undulating	None
Shade Trees	13	2
Evergreen Trees	13	6
Shrubs	31	4

NOTE – It should be noted that a 75' utility easement⁵ runs the full length of the property along the eastern Lot Line, within the Property. The presence of this easement limits buffering/planting opportunities along the eastern Lot Line.

PROCEDURAL

Public Notice: The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Development Standard. This petition is scheduled to receive its public hearing at the July 12, 2016, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

Conditions: The UDO⁶ and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

Acknowledgement of Variance: If the Board of Zoning Appeals approves this petition, then the UDO⁷ requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

⁵ Duke Energy has overhead transmission lines within this utility easement.

⁶ Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

⁷ Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.

Variances of Development Standard: The Board of Zoning Appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the underlying zoning ordinance. A variance may be approved under Indiana Code § 36-7-4-918.5 only upon a determination in writing that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property.

DEPARTMENT COMMENTS:

Approval: If the Board is inclined to approve the variances, then the Department recommends approval with the condition that the landscaping plan that is to be approved with the subsequent Detailed Development Plan be substantially similar to the landscaping plan that accompanies this variance request (see **Exhibit 3**).

Recommended Findings for Approval: If the Board is inclined to approve the variance, then the Department recommends the findings as set forth below:

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

Finding: It is unlikely that approving the requested variance would be injurious to the public health, safety, morals, and general welfare of the community because the proposed improvements will otherwise comply with the applicable standards of the SF3: Single-Family Medium Density District.

- 2) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

Finding: It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner. The proposed variance should not have a negative impact on surrounding properties because: (i) the existing and proposed improvements enhance the value of the subject property; (ii) the parcel will otherwise comply with or exceed the applicable standards of the SF3: Single-Family Medium Density District; and (iii) the approval of the variance will allow for the continued use and improvement of the property in a manner substantially consistent with the quality and character of the surrounding area and Comprehensive Plan.



- 3) *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

Finding: Strict adherence to the zoning ordinance would result in a much heavier landscaped perimeter of a Lot that is surrounded by single-family residential neighborhood lots and common areas. Additional landscaping per the UDO could change the character of the area in a way that detracts from the existing residential character of the area. Additionally, the presence of the utility easement along the eastern Lot Line causes the inability to comply with required buffer mounding and plantings in the eastern buffer yard.